

**EXHIBIT B-3**

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tent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property.
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - a. someone insured by this insurance; or
  - b. a business firm:
    - (1) owned or controlled by you; or
    - (2) that owns or controls you.

This will not restrict your insurance.

## **GENERAL CONDITIONS**

### **A. Concealment, Misrepresentation Or Fraud**

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other Insured, at any time, concerning:

1. this Coverage Part;
2. the Covered Property;
3. your interest in the Covered Property; or
4. a claim under this Coverage Part.

### **B. Control Of Property**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### **C. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Part unless:

1. there has been full compliance with all the terms of this Coverage Part; and
2. the action is brought within 2 years after you first have knowledge of the direct loss or damage.

### **D. No Benefit To Bailee**

No person or organization, other than you, having custody of Coverage Property will benefit from this insurance.

### **E. Policy Period**

We cover loss or damage commencing:

1. during the policy period shown in the Declarations; and
2. within the coverage territory.

### **F. Valuation**

The value of property will be the least of the following amounts:

1. the actual cash value of that property;
2. the cost of reasonably restoring that property to its condition immediately before loss or damage; or
3. the cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.



Administrative Offices  
580 Walnut Street  
Cincinnati, Ohio 45202  
Tel: 1-513-369-5000

### CANCELLATION MEMO

Date: 09/24/02

Policy No. MAC 1-32-13-86 - 02

From: GREAT AMERICAN INS CO OF NY  
49 E 4TH ST  
CINCINNATI, OH 45202

Insured:  
TRATAROS CONSTRUCTION, INC.  
(SEE 1L8802)

To: ALLIED COVERAGE CORP  
390 NORTH BROADWAY  
JERICHO, NY 11753

Please refer to item(s) marked (X) below:

1. ( X ) As you requested, the following information is furnished  
Policy cancelled ( X ) Pro Rata ( ) Short Rate as of 10 / 13 / 02  
  
( X ) The return premium is \$ 17,655.98 \*\*  
\*\* If the policy is on an installment plan, the return premium due insured is annual less any unpaid or future installments.
2. ( ) Above policy has been received for cancellation ( ) Pro Rata  
( ) Short Rate as of / / quoting return premium of \$  
  
Our calculation develops return premium of \$ . Please recheck your figures and advise.
3. ( ) Please advise: ( ) Method of cancellation ( ) Effective date of cancellation ( ) Reason for cancellation
4. ( ) Audit Policy - our calculation develops a return premium of \$ for coverages except Section 11 and automobile. Premium adjustment for Section 11 and automobile will be sent upon completion of audit.
5. ( ) Please refrain from taking credit for return premium of \$ computed by you. An audit is required before this premium can be adjusted.
6. ( ) We have received word that the above policy has been cancelled on your record, but the evidence of cancellation has not been received by this office. Will you kindly check your records and if in agreement submit the cancellation evidence to the writer's attention.

Reply:



Administrative Offices  
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Policy No. MAC 1-32-13-86 02

### EQUIPMENT BREAKDOWN COVERAGE PART DECLARATIONS

**NAMED INSURED:** TRATAROS CONSTRUCTION, INC.  
(SEE IL8802)

**POLICY PERIOD:**  
04/01/02 to 04/01/03

These coverages apply to any location listed on  
for Equipment Breakdown Coverage Part Declarations No.

COVERAGES	LIMITS
Equipment Breakdown Limit:	\$ 5,555,000
Property Damage:	\$ 4,840,000
Business Income:	\$ 715,000
Extra Expense:	\$ 25,000
Service Interruption:	\$ 25,000
Perishable Goods:	\$ 25,000
Computer Equipment:	\$ 25,000
Demolition and ICC:	\$ 25,000
Expediting Expenses:	\$ 25,000
Hazardous Substances:	\$ 25,000
CFC Refrigerants:	\$ 25,000
Newly Acquired Locations:	\$ INCLUDED
Errors in Description:	\$ NOT COVERED

#### DEDUCTIBLES:

Combined Coverage Policy Deductible	\$ 1,000
Separate Coverage Deductibles	\$
	\$
	\$
	\$
	\$
	\$

#### OTHER CONDITIONS:

Newly Acquired Locations to a maximum of	60 days
Extended Business Income	60 days
Business Income Coinsurance	

#### PREMIUM FOR THIS COVERAGE PART IS:

Total Advance Premium: \$ 2,036  
Payable at Inception: \$ 1L7001  
\$

**FORMS AND ENDORSEMENTS** applicable to this Coverage Part and made a part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule, BM 88 01 (01/86).



Administrative Offices  
580 Walnut Street  
Cincinnati, Ohio 45202  
Tel: 1-513-369-5000

BM 88 01 (Ed. 01 86)

## BUSINESSPRO FORMS AND ENDORSEMENTS SCHEDULE

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

BM7210	06/98	NY	EQUIPMENT BREAKDOWN COV PART DEC
BM7211	06/98	NY	EQUIPMENT BREAKDOWN COV FORM



Administrative Offices  
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BM 72 11  
(Ed. 06 98)

## EQUIPMENT BREAKDOWN COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this Insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section G - DEFINITIONS, except for "accident" and "covered equipment," which are defined in A.1.a. and b. below.

### A. COVERAGE

#### 1. Covered Cause of Loss

The insurance provided by this Coverage Part applies to the direct result of an "accident" to "covered equipment."

a. "Accident" means direct physical loss as follows:

- (1) mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (2) artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances or wires;
- (3) explosion of steam boilers, steam piping, steam engines or steam turbines owned or leased by you, or operated under your control;
- (4) loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- (5) loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

b. "Covered Equipment," unless specified otherwise in the Declarations, means any property built to operate under vacuum or pressure, other than

weight of contents, or used for the generation, transmission or utilization of energy.

Such property must be at a location described in the Declarations and must be owned or leased by you or operated under your control, except as specifically provided for under Service Interruption coverage and the Service Interruption Component of other coverages.

#### 2. Coverages Provided

The following coverages are provided if shown in the Declarations.

The "accident" must occur during the Policy Period, but expiration of the policy does not limit our liability.

##### a. Property Damage

We will pay for direct damage to "covered property."

##### b. Business Income

- (1) We will pay your actual loss of "business income" that results directly from the necessary total or partial interruption of your business.
- (2) We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do

not exceed the amount of loss that otherwise would have been payable under this coverage.

- (3) We will consider the actual experience of your business before the "accident" and the probable experience you would have had without the "accident" in determining the amount of our payment.

- (4) This coverage continues until the date the damaged property is repaired or replaced, plus the number of days shown in the Declarations for Extended Business Income.

#### c. Extra Expense

We will pay the reasonable "extra expense" to operate your business during a total or partial interruption of business.

#### d. Service Interruption

- (1) Any insurance provided for Business Income and Extra Expense coverages is extended to apply to loss as qualified below.

- (2) The "covered equipment" is owned by a:

- (a) utility,
- (b) landlord, or
- (c) other supplier;

with whom you have a contract to provide you with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

#### e. Perishable Goods

- (1) We will pay for your loss of "perishable goods" due to spoilage.
- (2) We will also pay for such loss caused by an "accident" to "covered equipment" owned by a:

- (a) utility,
- (b) landlord, or
- (c) other supplier;

with whom you have a contract to provide you with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

- (3) We will also pay for your loss of "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.

- (4) We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

#### f. Computer Equipment

We will pay for direct damage to "computer equipment" that is damaged by an "accident" to such equipment.

We will also pay for loss as described in Business Income and Extra Expense coverages caused by such damage, if these coverages are indicated in the Declarations.

#### g. Demolition and ICC (Increased Cost of Construction)

If an "accident" to "covered equipment" damages a building that is "covered property"; and the loss is increased by enforcement of any ordinance or law in force at the time of the "accident" that regulates the construction or repair of buildings, or establishes zoning or land use requirements, we will pay for the following additional costs to comply with such ordinance or law:

- (1) Your actual expenditures for the cost to demolish and clear the site of undamaged parts.

(2) Your actual expenditures for increased costs to repair, rebuild or construct the building. If the building is repaired or rebuilt, it must be intended for similar use or occupancy as the current building, unless otherwise required by zoning or land use ordinance or law.

(3) Your loss as described in Business Income and Extra Expense coverages caused by loss covered in (1) or (2) above, if these coverages are indicated in the Declarations.

We will not pay for:

- (4) any fine;
- (5) any liability to a third party;
- (6) any increase in loss due to a "hazardous substance"; or
- (7) increased construction costs until the building is actually repaired or replaced.

#### **h. Expediting Expenses**

With respect to your damaged "covered property," we will pay the reasonable extra cost to:

- (1) make temporary repairs; and
- (2) expedite permanent repairs or permanent replacement.

#### **i. Hazardous Substances**

We will pay for the additional cost to repair or replace "covered property" because of contamination by a "hazardous substance." This includes the additional expenses to clean up or dispose of such property.

**Additional costs** mean those beyond what would have been required had no "hazardous substance" been involved.

We will also pay for additional loss as described in Business Income, Extra Expense and Perishable Goods cov-

erages caused by such contamination, if these coverages are indicated in the Declarations.

#### **j. CFC Refrigerants**

We will pay for the additional cost to repair or replace "covered property" because of the use or presence of a refrigerant containing CFC (chlorinated fluorocarbon) substances. This means the additional expense to do the least expensive of the following:

- (1) repair the damaged property and replace any lost CFC refrigerant;
- (2) repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (3) replace the system with one using a non-CFC refrigerant.

**Additional costs** mean those beyond what would have been required had no CFC refrigerant been involved.

We will also pay for additional loss as described in Business Income, Extra Expense and Perishable Goods coverages caused by such loss, if these coverages are indicated in the Declarations.

#### **k. Newly Acquired Locations**

All coverages provided by this Coverage Part are extended to a newly acquired location that you have purchased or leased. This automatic coverage begins at the time you acquire the property and is subject to the following conditions:

- (1) You agree to pay an additional premium as determined by us. Such additional premium will be computed from the date of acquisition.
- (2) You report the location to us no later than the number of days specified in the Declarations for this coverage after the date you acquire the location.



(3) Insurance under this coverage for each newly acquired location will end when any of the following first occurs:

- (a) this Policy expires;
- (b) the number of days specified in the Declarations for this coverage expire after you acquire the location; or
- (c) the location is more specifically insured.

(4) If limits or deductibles vary by location, the highest limits and deductibles will apply.

#### I. Defense

This coverage is automatically included and does not need to be indicated in the Declarations.

(1) If a claim or "suit" is brought against you alleging that you are liable for damage to property of another in your care, custody or control, that was directly caused by an "accident" to "covered equipment," we will either:

- (a) settle the claim or "suit," or
- (b) defend you against the claim or "suit" but keep for ourselves the right to settle it at any point.

(2) We will pay, with respect to any claim or "suit" we defend:

- (a) all expenses we incur;
- (b) the cost of bonds to release attachments. We do not have to furnish these bonds;
- (c) all reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work;

(d) all costs taxed against you in any "suit" we defend;

(e) prejudgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable limits, we will not pay any prejudgment interest based on that period of time after the offer; and

(f) all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limits.

#### B. EXCLUSIONS

1. We will not pay for loss or damage caused by or resulting from:

a. Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions.

But if loss or damage from an "accident" results, we will pay for that resulting loss or damage.

b. The enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration, use, operation, construction or installation, except as provided under the following coverages: Demolition and ICC, Hazardous Substances or CFC Refrigerants.

c. Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, mudslide, earth sinking, tsunami or volcanic action.

d. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

However, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct

expenses of such drying out, subject to the applicable Property Damage limit and Direct Coverage deductible.

e. Windstorm or hail:

However, we will pay if:

- (1) "covered equipment" located within a building or structure suffers an "accident" that results from rain, snow, sand or dust; and
  - (2) the building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.
- f. Nuclear reaction or radiation, or radioactive contamination, however caused.
- g. War, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
- h. Fire or combustion explosion, whether or not caused by or resulting from an "accident."
- i. Any of the following tests:
- (1) a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or
  - (2) an insulation breakdown test of any type of electrical equipment.
- j. Water or other means used to extinguish a fire, even when such an attempt is unsuccessful.
- k. Any of the following causes of loss, if coverage for that cause of loss is provided by another coverage part or policy of insurance you have, whether collectible or not:

- (1) lightning, explosion (except for steam or centrifugal explosion); smoke, aircraft or vehicles, riot or civil commotion, vandalism or sprinkler leakage;
  - (2) breakage of glass, falling objects, weight of snow, ice or sleet or water damage (including water damage that is the result of an "accident"); or
  - (3) freezing (caused by cold weather), collapse or molten material.
2. With respect to Business Income, Extra Expense and Service Interruption coverages, we will also not pay for:
- a. loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business at the described location;
  - b. that part of any loss that is due solely to the suspension, lapse or cancellation of a contract following an "accident" extending beyond the time Business Income is applicable; or
  - c. delay in resuming operations due to the need to reconstruct or reinput data or programs on "media."
3. With respect to Service Interruption coverage and Paragraph (2) of Perishable Goods coverage, we will also not pay for loss caused by or resulting from any of the causes of loss named in Exclusion 1.k. above, whether or not coverage for such cause of loss is provided by another coverage part or policy of insurance you have.
4. With respect to Perishable Goods coverage, we will also not pay for loss or damage as a result of your failure to use all reasonable means to protect the perishable goods from damage following an "accident."
5. With respect to Computer Equipment coverage, we will also not pay for loss or damage caused by or resulting from any defect, virus, loss of data or other situation within "media."

But if loss or damage from an "accident" results, we will pay for that resulting loss or damage.

6. None of the following is "covered equipment":

- a. structure, foundation, cabinet, compartment, or air supported structure or building;
- b. insulating or refractory material;
- c. sewer piping, underground vessels or piping, any piping forming a part of a sprinkler system or water piping other than:
  - (1) boiler feed water piping;
  - (2) boiler condensate return piping;
  - (3) water piping forming a part of refrigerating or air conditioning system;
- d. vehicle, aircraft, floating vessel or any equipment mounted on such vehicle, aircraft or floating vessel;
- e. dragline, excavation or construction equipment; or
- f. equipment manufactured by you for sale.

7. "Covered property" does not include live animals.

**C. LIMITS OF INSURANCE**

Any payment made under this Coverage Part will not be increased if more than one Insured is shown in the Declarations.

If two or more limits apply to the same portion of a loss, we will only pay the smaller limit for that portion of the loss.

**1. Equipment Breakdown Limit**

The most we will pay for loss or damage arising from any "one accident" is the amount shown as the Equipment Breakdown Limit in the Declarations. This total limit applies to all coverages under this Coverage Part except Defense. The costs

we incur under the Defense coverage shall not reduce the available Equipment Breakdown Limit.

**2. Coverage Limits**

The limit of your insurance under each of the coverages from loss or damage arising from any "one accident" is the amount shown in the Declarations for that coverage. These limits are a part of, and not in addition to, the Equipment Breakdown Limit. If an amount of time is shown, coverage will continue for no more than that amount of time immediately following the "accident."

**EXAMPLE 1 (Coverages that Do Not Overlap)**

If there is "one accident" that results in loss under Property Damage and Business Income coverages, the limits for those coverages will both be available, up to a combined amount not to exceed the Equipment Breakdown Limit.

**EXAMPLE 2 (Coverages that Overlap)**

If there is "one accident" that results in loss under Property Damage coverage and that is covered because of Newly Acquired Locations coverage, the overlapping portion of the loss, which in this case is the entire loss amount, will be subject to the smaller limit.

**D. DEDUCTIBLE**

If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident," the highest deductibles will apply.

**1. Direct and Indirect Coverages**

Unless otherwise shown in the Declarations, the Direct Coverages Deductibles apply to all loss or damage covered by this Coverage Part, with the exception of those coverages subject to the Indirect Coverages Deductibles as noted below.

Unless more specifically indicated in the Declarations, the Indirect Coverages Deductibles apply to Business Income, Extra Expense, Service Interruption, and the extensions of those Coverages included in other Coverages.

Defense Coverage is not subject to a deductible.

**2. Application of Deductibles****a. Dollar Deductibles**

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the applicable deductible or deductibles shown in the Declarations. We will then pay the amount of loss or damage in excess of the applicable deductible or deductibles, subject to the applicable limits shown in the Declarations.

**b. Time Deductibles**

If a time deductible is shown in the Declarations, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident." If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

**c. Multiple of Average Daily Value (ADV) Deductibles**

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the "business income" that would have been earned had no "accident" occurred during the period of interruption of business divided by the number of working days in that period. No reduction shall be made for the "business income" not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to all locations included in the valuation of the loss.

The number indicated in the Declarations will be multiplied by the ADV as determined above. The result will be used as the applicable deductible.

**EXAMPLE**

Business is interrupted, partially or completely, for 10 days. If there had been no "accident," the total "business income" for those 10 days would have been \$5,000. The Indirect Coverages Deductible is 3 Times ADV.

$$\$5,000 / 10 = \$500 \text{ ADV}$$

$$3 \times \$500 = \$1,500 \text{ Indirect Coverages Deductible}$$

**d. Percentage of Loss Deductibles**

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss or damage (prior to any applicable deductible or coinsurance) insured under the applicable coverage extension. If the dollar amount of such percentage is less than the indicated Minimum Deductible, the Minimum Deductible will be the applicable deductible.

**E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we admit liability for a loss and we and you disagree on the value of the property or "business income," either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property or "business income." If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. pay its chosen appraiser; and
- b. bear the other expenses of the appraisal and umpire equally.

### 3. Brands and Labels

If branded or labeled merchandise that is "covered property" is damaged by an "accident" to "covered equipment," but retains a salvage value, you may, at your expense:

- a. stamp the word **Salvage** on the merchandise or its containers if the stamp will not physically damage the merchandise; or
- b. remove the brands or labels, if doing so will not physically damage the merchandise. You must re-label the merchandise or its containers to comply with the law.

We will pay for any reduction in value of the salvage merchandise resulting from either of these two actions.

If a Brands and Labels Limit is shown on the Declarations, we will not pay more than the indicated amount for coverage under this Condition.

### 4. Coinsurance

#### a. Business Income

Unless otherwise shown in the Declarations, Business Income Coverage is subject to coinsurance. When coinsurance applies, we will not pay the full amount of any "business income" loss if the "business income actual annual value" is greater than the "business income estimated annual value." Instead, we will determine the most we will pay using the following steps:

- (1) divide the "business income estimated annual value" by the "business income actual annual value" at the time of the "accident";
- (2) multiply the total amount of the covered loss of "business income" by the figure determined in Paragraph (1) above;
- (3) subtract the applicable Deductible from the amount determined in Paragraph (2) above;

The resulting amount, or the Business Income Limit, whichever is less, is the most we will pay. We will not pay for the remainder of the loss.

This provision applies separately to each insured location.

#### EXAMPLE 1 (Underinsurance)

When:

The "business income actual annual value" at the location of loss at the time of the "accident" is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$100,000.

The actual loss of "business income" resulting from the "accident" is \$40,000.

The Business Income Limit is \$1,000,000.

The Business Income Deductible is \$5,000.

Step 1:  $\$100,000 / \$200,000 = .5$

Step 2:  $\$40,000 \times .5 = \$20,000$

Step 3:  $\$20,000 - \$5,000 = \$15,000$

The total "business income" loss recovery, after deductible, would be \$15,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

#### EXAMPLE 2 (Adequate insurance)

When:

The "business income actual annual value" at the location of loss at the time of the "accident" is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$200,000.

The actual loss of "business income" resulting from the "accident" is \$40,000.

The Business Income Limit is \$1,000,000.

The Business Income Deductible is \$5,000.

Step 1:  $\$200,000 / \$200,000 = 1$

Step 2:  $\$40,000 \times 1 = \$40,000$

Step 3:  $\$40,000 - \$5,000 = \$35,000$



The total "business income" loss recovery, after deductible, would be \$35,000.

#### b. Other Coinsurance

If indicated in the Declarations, specified coverages may be subject to coinsurance. We will not pay for the full amount of your loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable Deductible. The resulting amount, or the applicable limit, is the most we will pay. We will not pay for the remainder of the loss.

#### EXAMPLE 1 (Underinsurance)

When:

The value of perishable goods at the location of loss at the time of the "accident" is \$200,000.

The Perishable Goods Limit is \$100,000 @ 80% Coinsurance.

The actual loss under Perishable Goods Coverage resulting from the "accident" is \$40,000.

The Perishable Goods Deductible is \$5,000.

Step 1:  $\$200,000 \times 80\% = \$160,000$

Step 2:  $\$100,000 / \$160,000 = .625$

Step 3:  $\$40,000 \times .625 = \$25,000$

Step 4:  $\$25,000 - \$5,000 = \$20,000$

The total Perishable Goods loss recovery, after deductible, would be \$20,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

#### EXAMPLE 2 (Adequate insurance)

When:

The value of perishable goods at the location of loss at the time of the "accident" is \$100,000.

The Perishable Goods Limit is \$100,000 @ 80% Coinsurance.

The actual loss under Perishable Goods Coverage resulting from the "accident" is \$40,000.

The Perishable Goods Deductible is \$5,000.

Step 1:  $\$100,000 \times 80\% = \$80,000$

Step 2:  $\$100,000 / \$80,000 = 1.25$

Coinsurance does not apply.

Step 3:  $\$40,000 - \$5,000 = \$35,000$

The total Perishable Goods loss recovery, after deductible, would be \$35,000.

#### 5. Duties in the Event of Loss or Damage

You must see that the following are done in the event of loss or damage:

- a. give us prompt notice of the loss or damage. Include a description of the property involved;
- b. as soon as possible, give us a description of how, when and where the loss or damage occurred;
- c. allow us a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage;
- d. permit us to inspect the property and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis;
- e. if requested, permit us to question you under oath, at such times as may be reasonably required about any matter relating to this insurance or your claim including your books and records. In such event, your answers must be signed;
- f. send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request;

- g. cooperate with us in the investigation and settlement of the claim;
- h. promptly send us any legal papers or notices received concerning the loss or damage; and
- i. make no statement that will assume any obligation or admit any liability, for any loss or damage for which we may be liable, without our consent.

We may examine any Insured under oath, while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

#### 6. Reducing Your Loss

You must reduce your loss, if possible, by:

- a. resuming business, partially or completely;
- b. making up lost business within a reasonable amount of time. This includes working extra time or overtime at the location of loss or at another location. The reasonable amount of time does not necessarily end when the operations are resumed;
- c. using merchandise or other property available to you;
- d. using the property or services of others; or
- e. salvaging the damaged property.

#### 7. Salvage and Recoveries

When, in connection with any loss under this Coverage Part, any salvage or recovery is received subsequent to the payment of such loss, the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amounts thus found to be due either party from the other shall be paid promptly.

#### 8. Valuation

- a. Our payment for damaged "covered property" will be the smallest of:

- (1) the cost to repair the damaged property;
- (2) the cost to replace the damaged property on the same site; or
- (3) the amount you actually spend that is necessary to repair or replace the damaged property.

- b. You must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.

- c. If you do not repair or replace the damaged property within 24 months after the date of the "accident," then we will pay only the smaller of the:

- (1) cost it would have taken to repair at the time of the "accident"; or
- (2) actual cash value; at the time of the "accident."

- d. If any of the following conditions are met, property held by you for sale will be valued at the sales price as if no loss or damage had occurred, less any discounts and expenses you otherwise would have had:

- (1) the property was manufactured by you;
- (2) the sales price of the property is less than the replacement cost of the property; or
- (3) you are unable to replace the property before its anticipated sale.

- e. "Media" will be valued on the following basis:

- (1) for "media" that are mass-produced and commercially available, at the replacement cost;
- (2) for all other "media," at the cost of blank material for reproducing the records.

**F. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

**1. Additional Insured**

If a person or organization is designated in this Coverage Part as an additional Insured, we will consider them to be an Insured under this Coverage Part only to the extent of their interest.

**2. Bankruptcy**

The bankruptcy or insolvency of you or your estate will not relieve us of any obligation under this Coverage Part.

**3. Concealment, Misrepresentation or Fraud**

We will not pay for any loss if you or any other Named Insured at any time intentionally conceal or misrepresent a material fact concerning:

- a. this Coverage Part;
- b. the "covered property";
- c. your interest in the "covered property"; or
- d. a claim under this Coverage Part.

**4. Errors In Description**

We will pay your loss covered by this policy if such loss is otherwise not payable solely because of any unintentional error in describing a location insured under this policy.

You agree to give us prompt notice of any such error when discovered.

**5. Legal Action Against Us**

No one may bring a legal action against us under this Policy unless:

- a. there has been full compliance with all the terms of this Policy; and
- b. the action is brought within two years after the date of the "accident"; or

- c. we agree in writing that you have an obligation to pay for damage to "covered property" of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this Policy to bring us into an action to determine your liability.

**6. Liberalization**

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**7. Loss Payable**

- a. We will pay you and the loss payee shown in the Declarations for loss covered by this Coverage Part, as interests may appear. The insurance covers the interest of the loss payee unless the loss results from conversion, secretion or embezzlement on your part.
- b. We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest. If we cancel, we will mail you and the loss payee the same advance notice.
- c. If we make any payment to the loss payee, we will obtain their rights against any other party.

**8. Mortgage Holders**

- a. The term mortgage holder includes trustee.
- b. We will pay for direct damage to "covered property" due to an "accident" to "covered equipment" to you and each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the "covered property."



d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:

- (1) pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) has notified us of any change in ownership or material change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

e. If we pay the mortgage holder for any loss and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) the mortgage holder's right under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) the mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

h. If we suspend coverage, it will also be suspended as respects the mortgage holder. We will give written notice of the suspension to the mortgage holder.

## 9. Other Insurance

a. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable limits under this Coverage Part bear to the Limits of Insurance of all insurance covering on the same basis.

b. If there is other insurance covering the same loss or damage, other than that described in (a) above, we will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not.

In no case will we pay more than the applicable limits.

## 10. Policy Period, Coverage Territory

Under this Coverage Part:

a. The "accident" must occur:

- (1) during the Policy Period shown in the Declarations; and
- (2) within the Coverage Territory.

b. The Coverage Territory is:

- (1) the United States of America (including its territories and possessions);
- (2) Puerto Rico; and
- (3) Canada.

**11. Privilege to Adjust with Owner**

In the event of loss or damage involving property of others in your care, custody or control, we have the right to settle the loss or damage with respect to such property with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.

(1) someone insured by this insurance; or

(2) a business firm:

(a) owned or controlled by you; or

(b) that owns or controls you.

**12. Suspension**

Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment." This can be done by delivering or mailing a written notice of suspension to:

a. your last known address; or

b. the address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment."

If we suspend your insurance, you will get a pro rata refund of premium for that "covered equipment." But the suspension will be effective even if we have not yet made or offered a refund.

**13. Transfer of Rights of Recovery Against Others to Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

a. Prior to a loss to your "covered property."

b. After a loss to your "covered property" only if, at time of loss, that party is one of the following:

**G. DEFINITIONS**

1. "Accident" is defined in A.1.a., Coverage - Covered Cause of Loss.

2. "Boilers and Vessels" means:

a. any boiler, including attached steam, condensate and feedwater piping; and

b. any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this coverage form, but may appear in the Declarations.

3. "Business Income" means the sum of:

a. the Net Income (net profit or loss before income taxes) that would have been earned or incurred; and

b. continuing normal operating expenses incurred, including employee payroll.

4. "Business Income Actual Annual Value" means the "business income" for the current fiscal year that would have been earned had no "accident" occurred.

In calculating the "business income actual annual value," we will take into account the actual experience of your business before the "accident" and the probable experience you would have had without the "accident."

5. "Business Income Estimated Annual Value" means the anticipated "business income" reported to us and shown in the Declarations. If no value is shown in the Declarations, the "business income estimated annual value" will be the most recent report of anticipated "business income" values on file with us.

6. **"Computer Equipment"** means "covered property" that is electronic computer or other electronic data processing equipment, including "media" and peripherals used in conjunction with such equipment.
7. **"Covered Equipment"** is defined in A.1.b., Coverage - Covered Cause of Loss.
8. **"Covered Property"** means property that
- a. you own; or
  - b. is in your care, custody or control and for which you are legally liable;
- while at a location described in the Declarations.
9. **"Extra Expense"** means the additional cost you incur to operate your business during the interruption over and above the cost that normally would have been incurred to operate the business during the same period had no "accident" occurred.
10. **"Hazardous Substance"** means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.
11. **"Media"** means all forms of electronic, magnetic and optical tapes and discs for use in any electronic computer or electronic data processing equipment.

12. **"One Accident"** means:

If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."

13. **"Perishable Goods"** means any "covered property" subject to deterioration or impairment as a result of a change of conditions, including but not limited to temperature, humidity or pressure.

14. **"Production Machinery"** means:

Any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this coverage form, but may appear in the Declarations.

15. **"Suit"** means a civil proceeding to which this insurance applies and includes:

- a. an arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

## GUIDE TO POLICY CONSTRUCTION

A Great American Insurance Company Business policy consists of:

- A. A policy Jacket, containing company officers' signatures;
- B. A common Policy Declarations;
- C. Common Policy Conditions;
- D. One or more underlying lines of insurance Policy Declarations;
- E. One or more Coverage Parts (each line of insurance is a coverage part) for each line of insurance Declarations.

Each Coverage Part consists of:

- 1. A line of insurance Conditions form (if applicable);
- 2. One or more Cause of Loss forms (if applicable);
- 3. Applicable Endorsements.